

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE

February 25, 2008 Session

MELISSA A. GRAYSON v. SHAW INDUSTRIES, INC.

**Direct Appeal from the Circuit Court for Monroe County
No. V03-255P Lawrence H. Puckett, Judge,**

Filed August 25, 2008

E2007-1221-WC-R3-WC - Mailed May 9, 2008

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for a hearing and a report of findings of fact and conclusions of law. While at work for the Employer, the Employee's hair was caught in machinery, which violently pulled her head into the machine. Her scalp was pulled away from her skull. She received treatment at an emergency room. In the months that followed, she had three surgical procedures to repair the wound and her scalp. She was diagnosed with post traumatic stress syndrome, developed sleep problems, anxiety and headaches. She became fearful and anxious around machinery and was ultimately discharged by her Employer. Her physicians and vocational experts and the Employer's vocational expert agreed that when a Social Security questionnaire was considered, she was 100% disabled. Nevertheless, the Employer contends that she is not 100% disabled. We affirm the judgment of the trial court.

Tenn. Code Ann. § 50-6-225(e) (Supp. 2007) Appeal as of Right; Judgment of the Circuit Court Affirmed

JERRY SCOTT, SR. J., delivered the opinion of the court, in which WILLIAM M. BARKER, C.J., and DONALD P. HARRIS, SR. J., joined.

Charles W. Dooley and Amanda E. Kelley, Chattanooga, Tennessee, for the appellant, Shaw Industries, Inc.

Charles C. Burks, Jr., Knoxville, Tennessee, for the appellee, Melissa Grayson.

OPINION

Factual and Procedural Background

Melissa M. Grayson was a "creel operator" for her employer, Shaw Industries, Inc. Her job consisted of operating a machine which processed yarn. On December 3, 2001, as she was

performing her job her hair got caught on a moving shaft, which pulled her head violently into the machine. Before she could be freed from the machine, an area of her scalp was pulled away from her skull. She also suffered several blows to the head. She was taken to an emergency room by ambulance. Over the course of the next several months, three surgical procedures were performed to repair the wound and revise the scar.

She was allowed to return to light duty approximately two months after the accident. Thereafter, her work consisted mainly of sweeping and cleaning. She began to experience flashbacks of the accident. She developed sleep problems, anxiety and headaches. As a result of these problems, the plastic surgeon who was treating her scalp injury referred her to a psychologist, Dr. Gary Cundiff, and a neurologist, Dr. Charles P. Hughes. The psychologist diagnosed her with post-traumatic stress disorder (“PTSD”), and counseling was provided. The neurologist prescribed medication to control her anxiety and headaches. Neither Dr. Cundiff nor Dr. Hughes testified.

Ms. Grayson continued to work at light duty tasks until she was terminated in July of 2003. She did not operate any machinery during that time. She testified that she dreaded going to work, and that the sound of the machinery in the workplace caused her to become very anxious. Her testimony is the only evidence introduced on the subject, and it is not entirely clear. It appears that she believed that she was medically unable to work on machinery such as that at her place of employment, and that Shaw Industries either would not or could not provide other work for her.

Ms. Grayson was evaluated at the request of her attorney by Dr. Edward Workman, a psychiatrist, who testified by deposition. Dr. Workman confirmed the diagnosis of PTSD. He also found that Ms. Grayson had a mild post-concussive disorder. Based upon tests which he administered, he found that she had “deficits in attention, concentration and short-term recall” He opined that she had an impairment of 29% due to PTSD; 5% due to post-concussive disorder; and 5% due to chronic headaches. Using the combined values chart contained in the AMA Guides, the total of these impairments was 36% to the body as a whole. Concerning restrictions, Dr. Workman testified that Mr. Grayson “may be able to return to gainful employment in the future, but she will not be able to work as a machine operator.”

Dr. J. Woody Kennedy evaluated Ms. Grayson’s scalp injury. Dr. Kennedy’s report was introduced as an exhibit to Dr. Workman’s deposition. Dr. Kennedy opined that she retained 1% permanent impairment to the body due to disfigurement and 1% due to dysfunction of the suborbital nerve.

Dr. Wayne Y. Kim, a psychiatrist, evaluated Ms. Grayson at the request of Shaw Industries. He agreed with the diagnosis of PTSD. He assigned an impairment of 20% to the body as a whole for that condition. He recognized that she suffered from recurrent headaches, but did not assign impairment for that condition. He disagreed with Dr. Workman’s diagnosis of post-concussive disorder, stating: “[I]t seem[s] like post-concussion implies that because of the trauma there is some sort of personality changes or change in her cognitive functioning. I do not find that.”

Dr. Rodney Caldwell conducted a vocational evaluation at Ms. Grayson’s request. He found that she was able to read at a sixth grade level and perform arithmetic at a twelfth grade level. He

initially found that she had a vocational impairment of 75%. This opinion appeared to be based largely upon his understanding that Dr. Workman had recommended that Ms. Grayson “not work around machines.” More than a year after he interviewed her, Dr. Caldwell sent a Social Security disability questionnaire to Dr. Workman. The questionnaire listed several specific work-related activities, and provided boxes to be checked to indicate Ms. Grayson’s functional level in each category of activities. Based upon Dr. Workman’s responses to this questionnaire, Dr. Caldwell opined that Ms. Grayson was 100% vocationally disabled.

Michael Galloway conducted a vocational evaluation on behalf of Shaw Industries. Like Dr. Caldwell, he found that she was able to read at a sixth grade level. However, his testing indicated that she was able to perform arithmetic at only a seventh grade level. Based upon the deposition of Dr. Workman, he opined that Ms. Grayson retained a 24% vocational disability. He agreed with Dr. Caldwell that Ms. Grayson had a 100% disability based upon Dr. Workman’s responses to the Social Security questionnaire.

On the date of trial, Ms. Grayson was forty years old. She was a high school graduate but had no additional education. She began working for Shaw Industries in 1994. Her primary work experience prior to that time was as a sewing machine operator. She testified concerning several ongoing problems resulting from her injury. She reported having headaches twice a week, even though she regularly took Topomax, a medication designed to prevent headaches. She stated that she had depression and anxiety, and also had difficulty concentrating. She found it frightening to be near noisy machinery, such as a riding lawn mower. She was able to perform regular housework, and had participated in a group which raised funds for the shipping of packages to soldiers stationed overseas. Since being terminated by Shaw Industries, she had worked briefly, on a part-time basis, for her mother-in-law performing background checks by computer and serving legal process.

The trial court found that Ms. Grayson to be permanently and totally disabled, and judgment was entered accordingly. Shaw Industries has appealed, contending that the trial court erred by that finding.

Standard of Review

The standard of review of issues of fact is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2006). When credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness’ demeanor and to hear in-court testimony. Humphrey v. David Witherspoon, Inc., 734 S.W.2d 315, 315 (Tenn. 1987). A reviewing court, however, may draw its own conclusions about the weight and credibility to be given to expert testimony when all of the medical proof is by deposition. Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997); Landers v. Fireman’s Fund Ins. Co., 775 S.W.2d 355, 356 (Tenn. 1989). A trial court’s conclusions of law are reviewed de novo upon the record with no presumption of correctness. Ridings v. Ralph M. Parsons Co., 914 S.W.2d 79, 80 (Tenn. 1996).

Analysis

Shaw Industries contends that the evidence preponderates against the trial court's finding that Ms. Grayson is permanently and totally disabled. In support of its position, it points out that Ms. Grayson is relatively young, and that she has no physical restrictions as a result of the injury. Her employer also contends that Dr. Workman testified, in effect, that he thought she should work. In addition, it argues that Dr. Caldwell's opinion that Ms. Grayson was totally disabled was incorrect because it was based upon a misinterpretation of Dr. Workman's restrictions. Further, Shaw Industries submits that Dr. Caldwell's opinion was unreliable because of his reliance upon Dr. Workman's responses to the Social Security questionnaire.

In response, Ms. Grayson notes that all of the doctors who have treated her agree that she has PTSD. She also cites her own testimony and that of her husband concerning her lack of ability to perform various activities of daily living. In addition, she points out that Dr. Caldwell and Mr. Galloway agreed that she would not be able to work based upon Dr. Workman's responses to the Social Security questionnaire.

Permanent total disability occurs when an injured employee is totally incapacitated "from working at an occupation which brings the employee an income." Tenn. Code Ann. § 50-6-207(4)(B)(2005). The factors to be considered in determining whether or not an injured employee is permanently and totally disabled were recently summarized in Hubble v. Dyer Nursing Home, 188 S.W.3d 525, 535-36 (Tenn. 2006):

The determination of permanent total disability is to be based on a variety of factors such that a complete picture of an individual's ability to return to gainful employment is presented to the Court. Vinson v. United Parcel Service, 92 S.W.3d 380, 386 (Tenn.2002); Cleek [v. Wal-Mart Stores, Inc.] 19 S.W.3d [770,] 774 [(Tenn. 2000).] Such factors include the employee's skills, training, education, age, job opportunities in the immediate and surrounding communities, and the availability of work suited for an individual with that particular disability. Cleek, 19 S.W.3d at 774 (citing Roberson v. Loretto Casket Co., 722 S.W.2d 380, 384 (Tenn.1986)). Though this assessment is most often made and presented at trial by a vocational expert, "it is well settled that despite the existence or absence of expert testimony, an employee's own assessment of his or her overall physical condition, including the ability or inability to return to gainful employment, is 'competent testimony that should be considered.'" Vinson, 92 S.W.3d at 386 (quoting Cleek, 19 S.W.3d at 774).

Both Ms. Grayson's vocational witness and Shaw Industries' vocational witness agreed that Ms. Grayson was permanently and totally disabled if Dr. Workman's responses to the Social Security questionnaire were considered. Shaw Industries contends that that information should not be considered. Its position is that the information in the questionnaire contradicts Dr. Workman's deposition testimony on the subject of medical restrictions. We have reviewed the testimony and the questionnaire, and do not find a contradiction to exist. In the testimony cited by Shaw Industries, Dr. Workman expressed the opinion that exposure to a "stimulus similar to the situation where [Ms. Grayson] was injured . . . would run the risk of a major progression in the extent of her PTSD . . .

.” For that reason, he imposed a medical restriction to avoid such stimuli. In contrast, the questionnaire sought information concerning Ms. Grayson’s ability to perform specified tasks, such as “Use judgment with the public,” “Interact with supervisors,” “Adjust to detailed, but not complex job instructions,” “Maintain personal appearance,” or “Behave in an emotionally stable manner.” Dr. Workman assessed her ability in each of those specified activities as either fair or poor. His deposition testimony at times touched on those matters, but did not directly address them because no direct questions were asked. The result is that the deposition testimony focuses on situations Ms. Grayson should avoid or activities in which she cannot participate. The questionnaire concerns her functional abilities. Those are entirely separate concepts. For that reason, there is no contradiction between the two. Moreover, the information contained in the questionnaire is consistent with the testimony of Ms. Grayson and her husband on the subject of her current ability to engage in the activities of daily living. That information is certainly relevant to her ability to obtain and keep a job.

We find that the questionnaire was appropriately considered by Dr. Caldwell in revising his opinion as to the extent of her vocational disability. Mr. Galloway, Shaw Industries’ vocational evaluator, agreed with Dr. Caldwell that Ms. Grayson was totally disabled if the Social Security questionnaire was taken into account. Having examined the record as a whole, we find that the evidence does not preponderate against the trial court’s finding that Ms. Grayson is permanently and totally disabled as a result of her work-related injury.

Conclusion

The judgment is affirmed. Costs are taxed to Shaw Industries, Inc. and its surety, for which execution may issue if necessary.

JERRY SCOTT, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

MELISSA A. GRAYSON v. SHAW INDUSTRIES

Circuit Court for Monroe County

No. V03-255P

Filed August 25, 2008

No. E2007-01221-SC-WCM-WC

JUDGMENT

This case is before the Court upon the motion for review filed by Shaw Industries, Inc. pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Shaw Industries, Inc. and its surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

WILLIAM M. BARKER, C.J., not participating